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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

LUDOVIC ROSENBERGER,

Defendant and Appellant.

2d Crim. No. B160012
(Super. Ct. No. YA048860)
(Los Angeles County)

Ludovic Rosenberger was placed on felony probation after a jury convicted him of three counts of possessing an unregistered assault weapon in violation of Penal Code section 12280, subdivision (b).¹ He contends the judgment must be reversed because the trial court improperly admitted irrelevant and prejudicial evidence that he possessed firearms and ammunition unrelated to the charged counts. He also argues that the jury should have been instructed that the inoperability of one of the weapons was a defense to that charge. We affirm.

BACKGROUND

On July 14, 2001, Los Angeles County Sheriff's deputies searched appellant's home and confiscated two guns from a bedroom closet: an A.K. Series

¹ All statutory references are to the Penal Code unless otherwise stated.

Norinco 84S assault rifle and a Thompson Model 1927 A-1 semiautomatic. Both qualified as assault weapons under the Roberti-Roos Assault Weapons Control Act of 1989 (AWCA). (§§ 12276; 12276.1.) Appellant admitted to one of the deputies that the guns were his. When asked whether they were registered as assault weapons, he said they were not, but he had purchased them several years ago. The deputies also seized two fully loaded magazines that fit the assault weapons.

Deputies again searched appellant's home on August 9, 2001 and discovered a Kimel AP-9 rifle wrapped in a trash bag in the garage. A stainless steel shotgun with a bandolier of ammunition, a pistol, and a rifle with a bayonet were all found in the house, as were "boxes and boxes and boxes" of ammunition. The Kimel qualified as an assault weapon under the AWCA. (§ 12276.1.)

The AWCA requires the registration of assault weapons and restricts the conditions under which even registered assault weapons may be possessed. The California Department of Justice maintains a registry for assault weapons that can be accessed under the Automated Firearm System (AFS). A sheriff's detective checked the AFS but could find no record that the three assault weapons seized from appellant had been registered as assault weapons. The Department of Justice certified that its Firearms Division had made a diligent search of its records and found no record of registration.

Appellant was charged with three counts of possessing an unregistered assault weapon under section 12280, subdivision (b). During his trial, he testified and acknowledged ownership of the three assault weapons confiscated from his home. He explained that he had purchased the Norinco in the 1980s and had filled out paperwork before picking it up from the gun dealer. He followed the same procedure when he purchased the Thompson and the Kimel in 1993. Appellant testified that he believed he had complied with all legal requirements when he purchased the guns, even though he did not later register them as required by the AWCA. He had attempted to render the Thompson inoperable by pulling certain pieces apart because he thought it would be a collector's item.

DISCUSSION

Evidence of Ammunition and Other Firearms

In addition to the three assault weapons at issue in the case, the deputies discovered several other firearms and a large amount of ammunition in appellant's home. None were illegal. The defense objected to evidence of the other weapons and ammunition as irrelevant to the charges and more prejudicial than probative under Evidence Code section 352.

The trial court overruled the objection. It reasoned that this evidence tended to show that appellant should have known the nature of the assault weapons and therefore, the registration requirement. The court instructed the jury that evidence of weapons and firearms other than the three assault weapons was admissible for the limited purpose of showing knowledge of firearms, and could not be considered for any other purpose.

We reject appellant's claim that the court erred by admitting the evidence. Appellant was charged with possessing unregistered assault weapons under section 12280, subdivision (b). The prosecution had the burden of proving that he knew or reasonably should have known the characteristics of each weapon bringing it within the registration requirements of the AWCA. (*In re Jorge M.* (2000) 23 Cal.4th 866, 869-870, 887.) Evidence that appellant possessed other weapons and ammunition was relevant because it tended to show his familiarity with guns, and made it more likely that he knew the three assault weapons possessed the characteristics that brought them under the AWCA.

The challenged evidence did have some potential for prejudice, because the number of weapons and quantity of ammunition were greater than that which the typical person would consider necessary for protection or sporting purposes. But there was no suggestion those items were illegal and the jury was specifically admonished that they could consider the evidence only on the limited issue of knowledge. The information that appellant possessed other guns and ammunition was not likely to improperly evoke an emotional bias against him in a case where it was essentially undisputed that he possessed

the three assault weapons that were the basis for the charges. (See *People v. Jenkins* (2000) 22 Cal.4th 900, 1008.)

A trial court enjoys broad discretion when ruling on a motion to exclude evidence as more prejudicial than probative, and that ruling will not be disturbed on appeal unless it can be shown that it was arbitrary or capricious. (*People v. Rodriguez* (1994) 8 Cal.4th 1060, 1124.) Here, the trial court reasonably concluded that the evidence of other firearms and ammunition was relevant to prove the essential element of knowledge. It did not abuse its discretion in allowing the prosecution to present the challenged evidence for this limited purpose.

"Permanent Inoperability" of Firearm as Affirmative Defense

Appellant argues that a weapon that has been rendered permanently inoperable is not subject to the registration requirements of the AWCA. He contends the trial court improperly refused to give a jury instruction on the permanent inoperability of the Norinco rifle as an affirmative defense and erroneously restricted his ability to present evidence on this issue. We disagree.

In support of his claim that the permanent inoperability of a weapon is a defense to a charge of possessing an unregistered assault weapon, appellant relies on language contained in section 12285, subdivision (b)(1): ". . . Any person who . . . (B) lawfully possessed a firearm subsequently declared to be an assault weapon pursuant to Section 12276.5, or subsequently defined as an assault weapon pursuant to Section 12276.1, shall, within 90 days, render the weapon permanently inoperable, sell the weapon to a licensed gun dealer, obtain a permit from the Department of Justice . . . or remove the weapon from this state." At the outset, it is not clear that this provision applies to the Norinco.

Three statutes list the weapons to which the AWCA applies. Section 12276 identifies certain weapons by type, series, manufacturer and model; section 12276.1 defines an assault weapon generically, as having one or more specified features; and section 12276.5 allows the Attorney General to have certain firearms declared assault weapons by the superior court. (*Jackson v. Department of Justice* (2001) 85 Cal.App.4th

1334, 1340.) The Norinco is a specifically designated weapon under section 12276, subdivision (a)(1)(B). The "permanent inoperability" exception of Section 12285, subdivision (b)(1) applies only to weapons that are designated assault weapons under section 12276.1 or 12276.5.

In any event, there was no evidence supporting an instruction on permanent inoperability with respect to the Norinco. Appellant initially raised this defense as to the *Thompson* gun, by testifying that he had never fired that gun and had attempted to render it inoperable soon after its purchase because he wanted to keep it as a collector's item. The court instructed the jury that permanent inoperability of the weapon was a defense to appellant's allegedly unlawful possession of the Thompson, but this defense was rejected, presumably because a criminalist testified on rebuttal that the Thompson had been test fired and appeared to be functioning properly.

The issue of permanent inoperability did not arise with respect to the Norinco until after the defense had rested. During the conference on jury instructions, but before the criminalist testified on rebuttal, the prosecution noted that the Norinco had not been test fired because it appeared to have a broken firing pin. Defense counsel argued that the court should allow him to cross-examine the criminalist about the broken firing pin, and should instruct the jurors to acquit him of the count involving the Norinco if they found that weapon was permanently inoperable.

The trial court rejected the proposed jury instruction, because (1) a broken firing pin would not render a firearm *permanently* inoperable, as required for the defense under section 12285, subdivision (b)(1)(B); and (2) there was no evidence that appellant had rendered the Norinco inoperable within the 90-day period specified by that statute. The court further ruled that defense counsel would not be permitted to examine the criminalist about the broken firing pin or the failure to test fire the Norinco unless he presented some evidence showing that the appellant had rendered it inoperable within the 90-day statutory period. Appellant presented no additional evidence on this point.

Under these circumstances, the court did not err when it restricted defense counsel's cross-examination of the criminalist and refused to instruct on permanent

inoperability as a defense to the charge of possessing the Norinco. At most, appellant might have been able to show through the criminalist's testimony that when the Norinco was seized by sheriff's deputies, it had a broken firing pin. But this is not the type of defect that renders a weapon *permanently* inoperable. (E.g. *State v. Young* (1998) 192 Ariz. 303, 305-307; 965 P.2d 37, 39-41 [disassembled shotgun not permanently inoperable because it could be reassembled and made operable by replacing firing pin]; *State v. Fisher* (1980) 126 Ariz. 50; 612 P.2d 506 [missing but replaceable firing pin is only temporarily, not permanently, inoperable].) Equally important, there was no evidence to show that this alleged "inoperability" was effectuated by appellant within the 90-day period established by section 12285, subdivision (b)(1)(B), assuming that statute applied to a weapon that, like the Norinco, was listed in section 12276, rather than in section 12276.1 or 12276.5.

It is unnecessary to consider appellant's claim that the phrase "permanently inoperable" is unconstitutionally vague as it is used in section 12285, subdivision (b)(1)(B).

The judgment is affirmed.

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COFFEE, J.

We concur:

YEGAN, Acting P.J.

PERREN, J.

Brad M. Fox, Judge
Superior Court County of Los Angeles

Randy S. Kravis for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Marc E. Turchin, Supervising Deputy Attorney General, Alene M. Games, Deputy Attorney General, for Plaintiff and Respondent.